THE SPEECH OR DECLARATION OF Mr. St-JOHN,

Now His MAIESTIES Solicitor Generall.

Delivered at a Conference of both Houses of Parlament, held 16°. CAROLI, 1640.

Concerning Ship-Money.

As it is reviſed, and allowed according to Order.

LONDON,
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1641.

THE SPEECH OF Mr. St-JOHN'S CONCERNING Ship-money.

MY LORDS,

THe Knights, Citizens, and Burgeſſes of the Commons houſe have intruſted me with a meſſage to your Lordſhips, of a generall and very high concernment, ſo generall, that the whole body of the Kingdome, both Peeres and people are intereſted in it; of ſo high conſequence, as that there is nothing that can concerne us nearer.

It is one of the *Grandia Regni*, ſo great, as that I ſhall not need to preſent it to your

Lordſhips, in a multiplying glaſſe, It will appeare too big in its owne dimenſi-ons.

Its not that Ship-money hath bin levyed upon us, but its that right whereby Ship-money is claymed, which if it bee true, is ſuch, as that it makes the payment of ſhip-money the guift and earneſt penny of all we have.

*I*ts not that our perſons have bin impriſo-ned, for not payment of Ship-money, but that our perſons, and as it is conceived, our lives too, are upon the ſame grounds of Law delivered up to bare will and pleaſure.

*I*ts that our birth-right, our anceſtrall right, our condition of continuing free ſub-jects is loſt, that of late there hath bin an en-deavour to reduce us to the State of Villa-nage, nay to a lower.

Its true, the Lord might taxe his Villaine, *de haut & de Baſſe*, might take all his lands, and goods, the villaine had no property a-gainſt his Lords, the Villaine he could not *Ire quo voluit*, he had no liberty of perſon, the Lord might impriſon him at his pleaſure, but the Villaines life was his owne, and not

not his Lords: the Law ſecured him that. But my Lords, as the law ſtands now declared, its diſputable, whether it doth ſo much for us.

My Lords, the Subject of this Meſſage is to preſent this ſenſe of the Commons to your Lord-ſhips. That the Lawes of the Realme inſtituted at the firſt, and freely aſſented unto, and choſen by their Anceſtors, for preſervation of themſelves, and us their diſcendants in our perſons, lives, and eſtates, have beene of late intruſted into ſuch hands as have indeavoured to force upon them a contrary end to that for which they were ordained, from defenſive, to turne them to offenſive, and inſtead of protecting us to make the Lawes the inſtrument of taking from us all we have.

Thoſe carriages which have produced this ſenſe of the Commons, I am commanded at this preſent to declare to your Lord-ſhips.

They are certaine extrajudicial opinions, delivered by the Judges at ſeverall times. The one in *November*, 1635. The other a yeare after in *February*, 1636.

The ſhip-writs that have iſſued to all the Counties of England, for theſe many years, laſt paſt without intermiſſion.

The principall thing in theſe writs, which *I* am to preſent to your Lordſhips, is not the charge and burthen which have bin thereby impoſed upon the Subiect, though that be great, but the declaration in them of the Law, and of the right whereby this burthen may be impoſed.

The laſt is the *Iudgement* in M. *Hampdens* caſe in the Exchequer upon theſe Ship-writs.

My Lords, the two laſt, that is; the Ship-writs, and the judgement, becauſe they are very large, *I* am only to open them without reading, and to deliver them to your Lordſhips.

The other two I am to read them, and then to deliver them to your Lordſhips.

The first opinion in November 1635. was as followeth.

I Am of opinion, that as where the benefit doth more particularly redound to the good of the Ports or maritime parts, (as in case of Piracie or depredations upon the Seas) there the charge hath beene, and may be lawfully imposed upon them according to presidents of former times, so where the good and safety of the Kingdome in generall is concern'd, and the whole Kingdome in danger, (of which his Majestie is the onely Iudge) there the charge of the defence ought to be borne by all the Realme in generall. This I hold agreeable both to Law, and reason.

My Lords, these opinions were delivered by the Iudges severally and apart, they were procured by the brocage and solicitation of my Lord *Finch*. The Iudges, as hee severally procured their hands, were by him injoyned secrecy, accordingly these opinions walked in the darke for a yeare and upwards, afterwards the Procurer of them, my Lord *Finch* liked them so well, as that he

he preſumed to preſent them to his Majeſties view. By his procurement a letter was directed from his Majeſtie to the Iudges, for delivery of their opinions in theſe, and ſome other additionals. The former that hath beene read is more modeſt, Its onely that his Majeſtie is the ſole Iudge of the danger, and that the ſtands as well as the maritime Townes are chargeable to the defence of the Kingdome. Its not declared in thoſe, that this charge may bee impoſed by his Majeſtie alone, for the expreſſion is onely that the charge may be lawfully impoſed, ſay not by whom.

In the other opinions they proceed a malo ad pejus, *and ſpeake plaine Engliſh, which follow in* hæc verba.

Charles Rex.

The Caſe.

WHen the good and ſafety of the Kingdome in generall is concerned, and the whole Kingdome in danger; Whether may not the King by writ under the great Seale of *England*, command all the

the Subjects in this Kingdome, at their charge, to provide and furniſh ſuch number of ſhips, with men, victualls, and Munition, and for ſuch time as he ſhall thinke fit, for the defence and ſafeguard of the Kingdome, from ſuch danger and perill, and by law compell the doing thereof, in caſe of refuſall or refractorineſſe, and whether in ſuch caſe, is not the King the ſole Judge, both of the danger, and when, and how the ſame is to be prevented and avoided.

C. R.

MAy it pleaſe your moſt Excellent Majeſty, we have according to your Majeſties command, ſeverally, and every man by himſelfe, and all of us together taken into ſerious conſideration the caſe and queſtions ſigned by your Maieſty: and incloſed in your royall letter. And we are of opinion, that when the good and ſafety of the Kingdome in generall is concerned, and the whole Kingdome in danger, your Maieſty may by writ under the great Seale of *England*, command all the Subiects of this your Kingdome, at their charge to provide and furniſh

niſh ſuch number of ſhippes, with men, victuall, munition, and for ſuch time as your Maieſty ſhall thinke fit, for the defence and ſafeguard of the Kingdome from ſuch danger and perill, And that by law your Maieſty may compell the doing th reof, in caſe of refuſall or refractorineſſe: and we are alſo of opinion, that in ſuch caſe your Maiefty is the ſole *Iudge*, both of the danger, and when and how the ſame is to be prevented and avoided,

Theſe opinions were ſubſcribed by all the *Iudges* in Seriants *Inne Hall*, they were afterwards publiſhed in the Starre-chamber, that the Subiects might take notice of them, and that they might never be forgotten, they are inrolled in all the Courts of *Weſtminſter-Hall*, in *Perpetuam rei Memoriam*.

Your Lordſhips will give me leave to repeate them in their plaine and legall ſenſe which *I* conceive to be thus:

That his Maieſty as often as himſelfe pleaſeth, may declare that the Kingdome is in danger, that ſo often, for prevention

of

of ſuch danger, his *Maieſty* by his writ under the great Seale of *England*, may alter the propertie of the Subiects goods, without their conſent in Parliament, and that in ſuch proportions as his *Maieſty* ſhall thinke fit, and beſides the altering of the property of their goods for the prevention of ſuch danger, may deprive them of the liberty of their perſons, and of their lives, and that in ſuch manner as himſelfe ſhall pleaſe.

The firſt of theſe, *viz.* That his Majeſty may declare the danger as often as he pleaſeth, is made good in theſe words, that the King is the ſole Iudge of the danger, and when the ſame is to be prevented and avoided.

The ſecond, that ſo often hee may alter the property of the Subiects goods, without conſent in Parliament, in theſe words, that his Maieſty may by writ under the great Seale of *England*, command and compell all the Subiects of the Realme, at their charge to provide and furniſh Ships,

That this may be, in what proportion his Majeſty ſhall pleaſe, in theſe words. That his Maieſty may command them to provide and furniſh ſuch number of ſhips, with men, victualls, and munition, and for ſuch time as his Majeſty ſhall thinke fit.

The laſt, *viz.* That which concernes our perſons in their two clauſes,

1 That his Maieſty in caſe of refractorineſſe may compell the doing of it. This compulſion, in caſe of refractorineſſe, includes the perſon, as well as the eſtate, nay it ſounds more in the perſonality then otherwiſe.

For the other, *viz.* Whether this perſonall compulſion may extend ſo farre as to life, *I* humbly leave it to your Lordſhips conſiderations upon the other clauſe, that is, that his Majeſty is the ſole *Iudge* of ſuch danger, and when and how the ſame is to be prevented, whether the words, (how the ſame is to be prevented) in this caſe of perſonall compulſion, doth not leave the manner of it wholly in his Maieſties breſt.

My

My Lords, If theſe opinions extend only to Ship-money, it is enough, his Majeſty takes what hee will, when he wil, if all bee taken to day, and afterwards by diſcent, or mine owne labour, I get a new ſtock or livelihood, that is no more mine, then the former, ſo that there's no property left unto the ſubiect, though the opinions goe no further.

But my Lords, Ship-money is not the whole extent of them, Ship-money by theſe opinions is not due by any peculiarity in Ship-money, but is therefore due, becauſe his Maieſty is the ſole Judge of the danger of the Kingdome, and when, and how the ſame is to bee prevented, becauſe his Maieſty for the defence of the Kingdome, may at his will and pleaſure charge the people: this is the ground, and upon the ſame reaſon the compulſion may be aſwell for making, and maintaining of Caſtles, Forts, and Bulwarkes, making of Bridges, for tranſporting his Armies, for proviſion of wages and victuals for ſouldiers, for horſes, and car-

riages, it may bee multiplyed *in infinitum.*

It may bee done, when the good and ſafety of the Kingdome is concerned, this extends to all things, and all times.

Qui jacet in terra, non habet unde cadat.

If theſe opinions bee law, *I* humbly leave it to your *L*ordſhips -conſideratic on, whether the governement bee not *Imperium legibus ſolutum.*

The next thing I ſhall offer to your Lordſhips, is the Ship-writs, a tranſcript of one of them directed to the Sheriffe of *Dorſet-ſhire* I ſhall deliver, all the reſt being of the ſame forme; becauſe that writ is large, *I* ſhall open it briefly; its to this effect.

*T*here is a declaration in it, that *Salus Regni periclitatur*, that the ſafety of the Kingdome was in danger: therefore the inhabitants of the ſeverall counties are commanded for the defence of the

the Kingdome, for the cuſtody of the ſeas; for the ſafeguard of the Merchants from Piracy, inward and outward, that they ſhould provide a ſhippe of Warre furniſhed with Gunnes, gunne-powder, double tackle, and all other neceſſaries: and this Shippe, thus furniſhed, at a day ſet to be brought to *Portsmouth*, to bee provided for twenty ſixe weekes, of Mariners wages, victuals, and other neceſſaries, and for the doing of this, Authority, is given to the Sheriffs of every County, to aſſeſſe every of the inhabitants, *ſecundum ſtatum & facultates ſuas*, according to their ſtates and meanes, and further power given him by diſtreyning and ſelling the diſtreſſe to levy theſe moneyes, and *quos contrarios invenerit*, to inpriſon their perſons, and further declares, that all this may be done, *ſecundum legem, & conſuetudinem Regni*, the ſence I conceive is briefly thus, that by the lawes of the Kingdom when his Maieſty ſhall declare that the Kingdome is in danger, hee may alter the property of the Subiects goods, and imprison their perſons.

Nay

Nay, that not only his Maiesty, but the Sheriffe may impriſon their perſons, by the *Law* the *Lord* might impriſon his villain, but could not transfer that power to his Bayliffes, or to any other, it was perſonal.

That the execution of this power over the perſons of the Subiects, hath gone no further then their inpriſonment, whether therein we are not wholy beholding to his Maieſties grace and goodneſſe, and nothing at al to the opinions of the Judges, *I* leave it to your *Lord*ſhips conſideration.

The laſt thing is the Judgement in the Exchequer, in the thirteenth yeare of his now Maieſties Reigne, againſt Mr *Hampden*, the Record is very long, *I* ſhall briefly open it to your Lordſhips.

Quarto Aug. 11 *Caroli.* there iſſued Shipwrits to ſeverall counties, amongſt the reſt, to the county of *Buck*; the Sheriffe aſſeſſed the inhabitants, ſome of them made default, & did not pay, upon a *Certiorari* out of Chancery directed to the Sheriffe, he certifies the parties that offēded, together with the ſums aſſeſſed. From the Chancery by

Mittimus

Mittimus theſe certificats were ſent into the Exchequer to the intent proceſſe might iſſue out againſt the Defaulters, a *Scire fac'* iſſued to the Sheriff of Buck, who thereupon among others returnes that M. *Hampden* had beene aſſeſſed twenty ſhillings for ſome Lands in Stoke Mandevile in that County, which hee had not paid; M. *Hampden* appeared and upon his appearance demands oyer of the Ship-writs, and the other proceedings. After his hearing thereof, and underſtanding the contents, hee demurs in Law, That is, demands the Iudgment, and opinion of the Iudges whither this writ was ſufficient in Law to force him to pay the ſaid twenty ſhillings.

This being a great and generall caſe, the Barons of the Exchequer deſired the aſſiſtance of the reſt of the Iudges, who did joyne accordingly.

The caſe came to bee argued: There were foure Arguments; two on M. *Hampdens* ſide, two on the other ſide. The firſt was in Michaelmas Tearme after Alhollantide, and all the foure Arguments were ſpeeded before Chriſtmas-Day, two of them in the Tearme, and no longer

time could bee procured for the reſt, but the ſhort vacation betweene Michelmas Terme and Chriſtmas; It was a caſe of ſo little concernement; ſo that whereas in Weſtminſter-Hall Terme after Tearme is uſually given to argue any demurrer; This muſt bee argued betweene Alhollantide and Chriſtmas throughout.

After the Arguments the Councell on both ſides were commanded to bring before the Iudges the Records and Authorities cited, they were brought, and for the eaſe of the Iudges many of them on M. *Hampdens* part were abbreviated on the Back-ſide, thoſe abbreviations were commanded to bee expunged.

Afterwards, the caſe came to Argument at the Bench, there the caſe was judged; and by the greater part of the Iudges judgment was given againſt M. *Hampden*: When the Iudges had delivered their opinions, it was the Barons part to give Iudgment. The Iudgement was,

Quod ſeparalia brevia prædicta & retorn' eorundem, ac ſchedul' prædict' eiſdem annex' ac materia in eiſdem content' ſufficien' in lege exiſt'

ad

ad præfat' Iohannem Hampden *de prædictis viginti ſolidis ſuper ipſum in forma, & ex cauſa prædict' aſſeſſ' onerand'; Ideo conſideratum eſt per eoſdem Barones, quod prædictus* Iohannes Hampden *de eiſdem viginti ſolidis onoretur & inde ſatisfaciat.*

My Lords, this Iudgement is a full and plenary execution of the former opinions of the Iudges, and of the Shipwrits, for ſo much as concernes our property: It was given in M. *Hampdens* caſe onely, but binds all the ſubjects; for ſo binding it is as that an honourable Perſon, now in my eye, in a caſe depending in the Kings bench, was denyed any Argument or Debate, concerning the right of Ship-money, for no other reaſon, but that it had beene by the former Iudgement adjudged already in the Exchequer.

My Lords, theſe extrajudiciall opinions of the Iudges, theſe Shipwrits, and this Iudgment, are thoſe carriages which have introduced this ſenſe of the commons, that the fundamentall Lawes of the Realme concerning our pro-

perty, and our perſons are ſhaken.

My Lords, the Commons have taken the extrajudiciall opinions publiſhed and inrolled, and the reſt ſeverally into conſideration; they have beene read openly in the houſe, and after long debate (long rather in conſideration of the greatnes of the matter then of the difficulty of it) they came to vote; foure ſeverall votes paſſed upon them: The votes paſſed without ſo much as one negative voice to any of them.

The votes were in ſubſtance, that they were againſt the Lawes of the Realme, the right of property, the liberty of the ſubject, contrary to former reſolutions in Parliament, and to the petition of Right.

The extrajudiciall opinions inrolled they voted in the whole, and every part of them to bee contrary to all thoſe, for they did conceave, that in thoſe opinions there was not any one clauſe, that was agreeable to the Law, but that throughout they were contrary to the Lawes.

My Lords, the things which the Commons

mons toke into their conſiderations before they proceeded to theſe votes, were the proceedings in the Parliament held 3. *Car.* when the petition of right was framed.

The Commons went no higher; the reaſons inducing them thereunto were becauſe in that Parliament theſe three had beene debated, property of our goods, liberty of perſon, ſecurity of our lives.

Two of them, that is, property and liberty of perſon, by occaſion of the commiſſions for the Loanes and the Inſtructions wherewith thoſe commiſſions were accompanied; that concerning our lives, by occaſions of the commiſſions that had iſſued for execution of martiall Law.

They conceived that if any thing concerning this had paſſed both houſes & his Majeſty, or the Iudgment of both houſes without his Majeſty; it would be in vaine to looke further, that it would bee onely *Actum agere.*

Nay, my Lords, they had a further conſideration, that if this were already ſetled in that Parliament, it would not onely bee derogatory to the Iuriſdiction of Parliaments, but dangerous too

too to looke higher, as that, that would inferre a defect in thoſe proceedings, and caſt an aſperſion upon that Parliament.

I am commanded now to preſent to your Lord-ſhips Conſiderations thoſe things which ſatisfied the commons; which are theſe three:

Firſt, the commiſſions for the Loane, with the Inſtructions.

2. A Commiſſion called the Commiſſion of Excize.

3. An Addition or ſaving, which was deſired by your Lord-ſhips, to have beene added to the petition of Right, at the time of the framing of it.

The caſe upon the Commiſſions for the Loanes ſtand thus:

13. October 2. Car. divers Commiſſions were directed to ſundry Commiſſioners to the number of 60. or 70. Lords and Gentlemen in the ſeverall Counties, whereby a compulſary ayde by way of Loane was required of the ſubiect; The cauſes and ground of this De-

Demand are in the Commiſſions expreſſed to bee theſe:

The King found the Crowne ingaged in a warre by adviſe of both houſes in Parliament: By that not onely the King and the Subject, but alſo his allyes beyond Sea were in danger.

The Ports beyond Sea, where our cloth is vented, and from whence we have moſt of our proviſion for ſhipping, were indangered.

His Majeſties treaſures were exhauſted, and his Coffers empty; A Parliament had beene ſummoned, but no ſupply.

Vnavoidable neceſſity both at home and abroad multiplied, the enemies great, and mighty preparations both at Sea and Land threatned the Kingdome daily.

Not onely the Kings honour, but the ſafety and very ſubſiſtence of the King and People, and of the true religion abroad are in apparant danger of ſuffering irreparably, unleſſe not onely a ſpeedy but a preſent ſtop bee made,

the

which cannot admit ſo long delay, as the calling of a Parliament. The people aſſured on the royall word of a King, that not one penny ſhould bee beſtowed, but upon thoſe publique ſervices onely, wherein every of them, and the whole body of the Kingdome, their Wives, and Children, and poſterity have their perſonall and common *intereſt*.

The Commiſſioners diligence commanded as they tendred the Kings honour and the ſafety of the realme.

Here *Salus Regni periclitabatur*, the whole Kingdome was in danger as in the Iudges opinions, and as in the Shipwrits, and Iudgement in the Chequer; nay, my Lords, further, the ſafety and very ſubſiſtence of the King, People, and the true Religion were in danger of ſuffering irreparably, the danger was inſtant, not a ſpeedy, but preſent ſtop muſt bee made, the Supply could not ſtay for a Parliament; At this time his Majeſties Coffers were exhauſted,

The

The King found the Crowne ingaged in this warre before the acceſſe of it to himſelfe; and that by advice in *Parliament*: all this expreſſed, onely a lending of money for prevention required; but it was a compulſary thing, and becauſe compulſary by the Inſtructions to binde over to the board, and impriſonment for refuſall. Theſe Commiſſions were in the *Parliament* 3. *Car.* firſt reſolved in the *Commons houſe* to be againſt Law, afterwards by your Lordſhips, and conſented unto by his *Majeſtie*, and are declared to be ſo in the Petition of *Right*, and the impriſonment of the Subiects for refuſall declared in the Petition of *Right* to be againſt the Law.

My *Lords*, the next is the Commiſſion called the Commiſſion of *Exciſe*, This was dated *ultimo Febr.* 3. *Car.* It was dated after the Summons to that *Parliament*. This Commiſſion iſſued to three and thirty Lords and others of his *Majeſties Privy Councell*. The Com-

missioners are thereby commanded to raise moneyes by Impositions or otherwise; as in their judgement they shall find to be most convenient.

The causes wherefore these monies are to bee raised, are expresst to bee these.

The defence and safety of the King and People which without extreamest hazzard of the King, Kingdome, and People, and of the Kings Friends and Allies beyond Seas; can admit no longer delay: Inevitable necessity wherein forme and circumstance must rather be dispenced withall than the substance lost.

The Commissioners not to faile therein, as they tender his *Majesties* honour, and the safety of the Kingdome and People.

Here *Salus Regni periclitabatur*, the whole Kingdome declared to be in danger, in greater and neerer than in the opinions, the Shipwrits or Judgements in the Chequer.

In

In the *Parliament* 3° *Caroli* this Commiſſion was adjudged by the *Commons* to be againſt the Lawes of the Realme, and contrary to the Judgement given in the Petition of Right; and after a Conference with your Lordſhips, your Lordſhips deſired his *Majeſty* that it might be Cancelled; the then Lord-Keeper ſhortly after brought it Cancelled to your Lordſhips in the Houſe, and there ſaid that it was Cancelled in his *Majeſties* preſence: you ſent it Cancelled to the *Commons* to bee reviewed, who afterward ſent it back to your Lordſhips.

My Lords, the laſt is, the addition of *Saving*, deſired to be added to the Petition of Right, which was in theſe words.

Wee humbly preſent this Petition to your *Majeſtie*, not onely with a care of preſerving our owne liberties, but with due regard to leave entire the Soveraigne power, wherewith your *Majeſtie* is truſted for the Protection, Safety, and happineſſe of your people.

Your Lordſhips deſire of this Addition to the Petition of Right, was taken in Conſideration by the *Commons*; and after debate, it was thought fit by them to bee rejected. A Conference was had with your Lordſhips, and Maſter *Noy* appointed by the *Commons* to declare the reaſons of their reſolutions; Your Lordſhips not receiving ſatisfaction at that Conference, whether this Addition ſhould be rejected or not: It was againe debated in the *Commons Houſe*, they centred upon the ſame bottome againe; It was thereupon reſolved to be rejected, the reaſons of their rejections were theſe in ſumme.

Firſt, they confeſſed that if theſe words were taken as a bare propoſition onely, without any reference to the Petition of Right, that it was a true propoſition.

That is, that the Law hath truſted the King with Soveraigne power for

for the protection, ſafety, and happineſſe of the people.

But if it ſhould bee added to the Petition of Right, as was deſired, then it was not true; but would make the Petition of Right *Felo de ſe*, and wholly deſtructive to it ſelfe in all the parts of it; that it would proceed *a benè diviſis ad malè conjuncta*: for then the Petition of Right as they reſolved, would have this ſence.

Whereas in the Petition of Right, it is ſaid, that no Ayde, Tax, Tallage, or other charge whatſoever, may be impoſed on the people, without their free conſent in *Parliament*; it would have this conſtruction. It is true, it cannot be done by the Kings ordinary power, but it may be done by that Soveraigne power wherewith the Law hath intruſted his *Majeſtie* for the protection, ſafety, and happineſſe of the people.

So likewiſe for impriſonment,

that they ought not to be impriſoned without due proceſſe of Law. It is true ordinarily, but the King may impriſon by his Soveraigne power wherewith the Law hath intruſted him for the protection, ſafety, and happineſſe of the people.

So for that of Martiall Law, that the Subjects lives ought not to be taken away, unleſſe by due proceſſe of Law. It is true ordinarily, but the King may doe it by his Soveraigne power, wherewith the Law hath intruſted him for the protection, ſafety, and happineſſe of the people.

Whereby they conceived that it would not onely make the Petition of right, to be wholly deſtructive of it ſelfe (the King could not doe it, yet hee might doe it,) but likewiſe, this Petition of Right would leave the Subjects in a farre worſe condition than it found them; for it would neceſſarily inferre that which is againſt the Law: *viz.*

That

That the King by his Soveraigne power, when he pleaſed to declare that it was for the good of the people, might doe all this.

Your Lordſhips at a Conference of both *Houſes*, managed on the part of the *Commons* by Serjeant *Glanvile* and Sir *Henry Martin*, received ſatisfaction from theſe Reaſons; and conſented to the leaving out of this addition; and accordingly the Petition of Right paſſed, and is Printed without it.

My Lords, theſe are the things I was commanded to preſent to your Lordſhips; other things there were, as the ſentence againſt Biſhop *Manwaring*; but theſe weighed ſo much with the *Commons*, as that they conceived they needed no more.

My Lords, theſe Preſidents of that *Parliament*, and theſe Opinions of the *Judges*, the Shipwrits and the Judgement in the *Chequer*; they are like the two Buckets at the Wel, if the one goe up,

up, the other muſt goe downe : *non bene conveniunt.*

My Lords, we have not cited theſe Preſidents out of diffidence, that your Lordſhips have forgot them, but becauſe others have ; or that we diſtruſt your Lordſhips Juſtice if you had forgot them ; for before theſe were, your Lordſhips concurred in opinion with your worthy Anceſtours that firſt gave them : their Noble blood runnes in your veines ; 'Its now to confirme your owne Judgement as well as theirs in your Lordſhips breaſts ; there are now the ſame Magazines and Fountaines of Honour and Juſtice as was then.

Theſe Judgements and proceedings were the actions of both Houſes, the danger by the violation is equall.

The Commons ſee nothing in the Judges opinions or Judgements, why they ſhould recede from their former Judge-

Judgements, they hope the ſame from your Lordſhips.

Beſides, my *Lords*, that the caſe is now much varying from what it was then, not onely in the matter, but as it concernes the Honour and Juriſdiction of this great Judicatory the *Parliament*.

The breach of Priviledge in the Members is tenderly reſented, becauſe that without this freedome they cannot adviſe and conſult concerning the *Ardua Regni*, but when they have done all, to have their judgements and their Acts of *Parliament* overthrown by the Judges afterwards: This makes *Parliaments* to be nothing; This ſets up the *Judges* above the *Parliament*; This puts us out of hope of redreſſe; If they may overthrow the proceedings of that *Parliament* of 3. *Car.* they may by the ſame Reaſon overthrow the Actions of this and of all Future *Parliaments*.

My *Lords*, this was not the pra-

ctiſe of their Predeceſſors, though but in private cauſes: If difficulty of Law aroſe, they alwaies conſulted this Oracle, and thence received their Anſwer how to give judgement. Judgements in the Higheſt Court of *Weſtminſter-Hall*, I meane in the Kings Bench, where the proceedings are *Coram Rege*, are here reverſable by *Writ of Error*.

In cauſes of great and generall Concernement they ever adjourned them higher, as things too high for them; *Qui conſulta Patrum qui Leges juraque ſervat*, doth well; they have taken that into their hands they had not to doe withall, and how they have handled the matter your Lordſhips have heard.

The *Judges* as is declared in the *Parliament* Roll of 11. *R.* 2. are the Executors of the Statute, and of the Judgements and Ordinances of *Parliament*: They have here made themſelves

ſelves the Executors of them, they have endeavoured the deſtruction of the Fundamentals of our Lawes and Liberties.

Holland in the Low Countryes lyes under the Sea; The ſuperficies of the Land is lower then the ſuperficies of the Sea; It is Capitall therefore for any man to cut the Bankes, becauſe they defend the Countrey.

Beſides our owne, even forraigne Authors, as *Comines* obſerves, that the Statute *de Tallagio*, and the other old Lawes, are the Sea Walls, and Bankes, which keepes the Commons from the Inundation of the Prerogative.

Theſe *Pioners* have not onely undermined theſe Bankes, but they have levelled them even with the ground.

If one that was known to be *hoſtis Patriæ*, had done this, though the dammage be the ſame, yet the guilt is leſſe.

But the *Conſervatores Ripārum*, the Overſeers intruſted with the defence of theſe Bankes, for them to deſtroy them; the breach of Truſt aggravates, nay alters the nature of the offence.

Breach of Truſt, though in a private perſon, and in the leaſt things, is odious amongſt all men; much more in a publique perſon, and in things of great and publique concernment, becauſe great Truſt bindes the party truſted to greateſt Care and Fidelity.

It is Treaſon in the Conſtable of *Dover Caſtle* to deliver the Keyes to the knowne Enemies of the Kingdome; becauſe that *Caſtle* is the Key of the Kingdome: Whereas if the Houſe-keeper of a private perſon, deliver poſſeſſion to his Adverſary; it is a Crime ſcarce puniſhable by Law.

The *Judges* under his *Majeſtie*, are the

the perſons truſted with the Lawes; and in them with the Lives, Liberties, and Eſtates of the whole Kingdome.

This Truſt of all we have is primarily in his *Majeſtie*; and from him delegated to the *Judges*.

His *Majeſtie*, at his Coronation is bound by his Oath to execute Juſtice to his people, according to the Lawes; thereby to aſſure the people of the faithful performance of this great Truſt. His *Majeſtie* againe, as hee truſts the *Judges* with the performance of this part of his Oath: So doth he likewiſe exact another Oath of them for their due execution of Juſtice to the people according to the Lawes; hereby the *Judges* ſtand intruſted with this part of his *Majeſties* Oath.

If therefore the *Judges* ſhall do wittingly againſt Law, they doe not onely breake their owne Oathes, and therein the common Faith and Truſt of the whole Kingdome, but doe as much

as in them lyes. (My *Lords*, I would not be miſtaken) I ſay, they doe as much as in them lyes Sperce and Blemiſh the Sacred Perſon of his *Majeſtie*, with the odious and hateſull ſin of Perjury.

My *Lords*, the haynouſneſſe of this offence is moſt legible in the ſevere puniſhment which former Ages hath inflicted upon thoſe *Judges*, who have broken any part of their Oathes wittingly, though in things not ſo dangerous to the Subject, as in this caſe in queſtion.

Sir *Thomas Wayland* chiefe Iuſtice of the *Common Pleas*, 17. *Ed.* 1. Was attainted of Felony for taking Bribes, and his Lands and Goods forfeited; as appeares in the *Pleas of Parliament*, 18. *Ed.* 1. And he was baniſhed the Kingdome as unworthy to live in that State, againſt which he had ſo much offended.

Sir *William Thorpe* Chiefe Iuſtice of the *Kings Bench*, in *Edw.* the 3^d^ time, having of five perſons received five ſeverall

verall Bribes, which in all amounted to an Hundred pounds; was for this alone adjudged to bee hanged, and all his Goods and Lands forfeited.

The reaſon of the judgement is entred in the Roll in theſe words.

Quia prædictus Willielmus Thorpe, qui Sacramentum Domini Regis erga Populum ſuum habuit ad cuſtodiendum, fregit malitioſè, falſè, & rebelliter quantum in ipſo fuit.

Becauſe that as much as in him lay, he had broken the Kings Oath made to the people, which the King had intruſted him withall.

There is a notable Declaration in that judgement; that is, that this judgement was not to bee drawne into example, againſt any other Officers who ſhould breake their Oathes, but onely againſt theſe, *Qui prædictum ſacramentum fecerunt, & fregerunt, & habent Leges Angliæ ad Cuſtodiendum*;

That

That is, onely to the *Judges* Oathes, who have the Lawes intruſted unto them.

This Iudgement was given 24. *Ed.* 3d. the next yeare in the *Parliament* 25. *Ed.* 3. *Numero* 10. It was debated in *Parliament*, whether this Iudgment was Legall; *& nullo contradicente*, it was declared to be juſt, and according to the Law: And that the ſame Iudgment may be given in time to come, upon the like occaſion. This Caſe is in point that it is death for any *Judge* wittingly to breake his Oath in any part of it.

This Oath of *Thorpe* is entred in the Roll, and is the ſame *verbatim* with the *Judges* Oath, in 18. *Edw.* 3. and is the ſame which the *Iudges* now take.

Your Lordſhippes will give mee leave to obſerve the differences betweene that and the Caſe in queſtion.

Firſt,

Firſt, that of *Thorpe* was only a ſelling of the law by retail to thoſe five perſons, for he had five ſeverall bribes of theſe five perſons, the paſſage of the law to the reſt of the Subjects for ought appeares, was free and open.

But theſe opinions are a conveyance of the law by whole ſale, and that not to, but from the ſubject.

Secondly, In that of *Thorpe*, as to thoſe five perſons, it was not an abſolute deniall of Iuſtice, it was not a damming up, but a ſtraitning onely of the channell.

For whereas the Iudges ought, *judicium reddere*, that is, the Laws being the birthright and inheritance of the ſubject, the Iudge when the parties in ſuit demãd judgment, ſhold *re-dare*, freely reſtore this right unto them; now hee doth not *dare*, but *vendere* with hazard onely of perverting Iuſtice, for the party that buyes the judgement may have a good and honeſt cauſe.

But theſe opinions, beſides that they have coſt the Subjects very deare, dearer then any, nay, I think I may truly ſay, then all the unjuſt judgments that ever have

beene given in this Realme.

Witneſſe the many hundred thouſand pounds, which under colour of them have beene levied upon the ſubjects, amounting to ſeven hundred thouſand pounds and upwards, in money paid in to the Treaſurer of the Navy; beſides what the ſubjects have bin forced to pay to Sheriffs, Sheriffs Bailiffs, and otherwiſe, which altogether, as is cõceived, amounts not to much leſſe than a Million: Beſides the infinite vexation of the ſubjects by ſuits in law, binding of them over, and attendance at the Councell Table, taking them from their neceſſary imployments, in making of Seſſes and Collections, and impriſonment of their perſons.

I ſay, my Lords, beſides what is paſt, to make our miſeries compleat, they have as much as in them lyes made them endleſſe.

For by theſe opinions they have put upon themſelves and their ſucceſſors, an impoſſibility of ever doing us right againe; and an incapacitie upon us of demanding it ſo long as they continue.

My

My Lords, in that ſore Famine in the land of *Egypt*, when the inhabitants were reduced to the next dore to death, (for there they ſay, *Why ſhould we die?*) for bread, firſt they give their money, next their flocks and cattle, laſt of all their perſons and their lands: for bread, all became *Pharaohs*; but by this *Lex Regia*, there is a tranſaction made not onely of our perſons, but of our bread likewiſe, wherewith our perſons ſhould be ſuſtained; that was for bread, this is of our bread.

For my Lords, ſince theſe opinions, if we have any thing at all, wee are not at all beholding to the law for it, but are wholly caſt upon the mercy and goodneſſe of the King.

Againe, there the *Egyptians* themſelves ſold themſelves, and all they had, to the King: if ours had bin ſo done, if it had bin done by our own free conſent in Parliament, we had the leſſe cauſe to complain; but it was done againſt our wils, and by thoſe who were truſted, and that upon oath, with the preſervation of theſe things for us.

My *Lords*, the Laws are our Forts and Bulwarks of defence, if the Captain of a Caſtle onely out of feare and cowardize, and not from any compliance with the enemy, ſurrender it, this is Treaſon, as was adjudged in the Parliament, 1. R. 2. in the two Caſes of *Gomines* and *Weſton*, and in the Caſe of the Lord *Gray* for ſurrendring *Barwick* Caſtle to the *Scots* in *Ed.* 3. time, though good defence had beene made by him, and that hee loſt his eldeſt ſonne in maintenance of the ſiege: and yet the loſſe of a Caſtle loſeth not the Kingdom, only the place and adjacent parts with trouble to the whole.

But by theſe opinions, there is a ſurrender made of all our legall defence of propertie; that which hath been preacht, is now judged, that there is no *meum & tuum* between the King and the people; beſides that which concerns our perſons.

My *Lords*, the law it is the Temple, the Sanctuarie, whither the ſubject is to runne for ſhelter and refuge: hereby it is become *Templum ſine numine*, as was the

the Temple built by the *Roman* Emperor, who after he had built it, put no gods into it.

We have the letter of the law ſtill, but not the ſence.

We have the fabrick of the Temple ſtill, but the Goddeſſe, the *Dii Tntelares* are gone.

But my Lords, this is not all the caſe, that is, that the law now ceaſeth to aide and defend us in our Rights, for then poſſeſſion alone were a good title, if there were no law to take it away, *occupanti concederetur & melior eſset poſsidentis conditio.* But this, though too bad, is not the worſt, for beſides that which is privative in theſe opinions, there is ſome what poſitive: For now the law doth not onely not defend us, but the Law it ſelf is made the Inſtrument of taking all away.

For whenſoever his Maieſty or his Succeſſors ſhall bee pleaſed to ſay, that the good & ſafety of the Kingdom is concern'd, and that the whole Kingdome is in danger,

danger, the when and how the ſame is to be prevented, makes our perſons and all wee have lyable to bare will and pleaſure.

By this means, the Sanctuary is turned into a ſhambles; the forts are not ſlighted, that ſo they might neither doe us good nor hurt, but they are held againſt us by thoſe who ought to have held them for us, and the mouth of our own Cannon is turned upon our ſelves.

My Lords, in theſe expreſſion s, there is no reflexion upon his Majeſty; Its only that theſe Iudges would have forc't upon the Law an unnaturall and contrary motion; his Majeſties carriage in the buſines cleers his juſtice.

The firſt opinion of the Iudges under their hands, was procured by my Lord *Finches* ſolicitation only, and by him brought to his Majeſty.

Theſe opinions procured the Letter from his Majeſty for the opinions enrolled, wherein, as likewiſe in the Caſe in the Chequer, the Iudges were left free,

as

as was acknowledged by two of the Iudges in the Chequer Chamber, who argued againſt theſe opinions with their proteſtation, that if there were any miſcarriage in that buſines, it muſt fall wholly upon themſelves, that the King was blameleſſe.

My Lords, wee know his Majeſties Iuſtice, is the faireſt, the richeſt Diamond in his Crown; the duſt which theſe men would have blown and forc't upon it, its faln ſhort, and with your Lordſhips helping hands, it will, we hope, be caſt upon their owne faces: a fitter place for it, then the other.

My Lords, the Oathes of the Iudges, as they bind them to the due adminiſtration of Iuſtice to the ſubject, according to the Lawes; ſo as they bee of the Kings Councell by their Oathes, they are bound lawfully to counſell him, that is, when their opinions are demanded, they are to deliver them according to the Law.

I ſhall therefore put your Lordſhips in minde of the memorable proceedings againſt

gainſt thoſe Iudges who have broken this part of their oath in that notable Parliament held the eleventh of *Richard* the ſecond.

In this Parliament, iudgment of high treaſon was given, againſt eighteen ſeverall perſons, and all ſave one of them of eminent Ranke; three Privy Counſellours, the Archbiſhop of *Yorke*, the Duke of *Ireland*, and Earle of *Suffolke*, the Biſhop of *Exeter*, the Kings Confeſſor, five Knights, ſome whereof had beene ſervants to *Edward* the third, and all ſave one ſervants to the then King, and ſome of them of Noble Diſcent, ſix Iudges, and *Lockton* the Kings Serjant at Law, *Blake* of the Kings Councell at law, and *Vske* the Vnder Sheriff of *Middleſex*.

Of theſe eighteen 8 were executed, that is, Sir *Robert Treſilian* the Chiefe Iuſtice, the five Knights, *Blake* of the Kings Councell at law, and *Vske* the under Sheriffe.

Three, that is, the Archbiſhop of *Yorke*, Duke of *Ireland*, and Earle of fled, *Suffolk*.

The

The reſt had their lives pardoned, but were baniſhed, their lands and goods forfeited, and little penſions allowed them during their lives.

It was made felony for any to procure their pardon, and they to be dealt with-all as traitors, if they returned from their baniſhment.

And of theſe eighteen perſons, all ſave three were impeached by the Commons.

The Offences which procured theſe exemplary puniſhments, although their proceedings be long, and comprehend all that was done in that Parliament, Ile briefly open them to your Lordſhips.

During the minority of that King by ill counſell of ſome neere his perſon, there were miſcarriage in Government. In the tenth year of his Reign, and the 20. of his age, a Parliament was holden; in that Parliament in aid of good government, & of due execution of the law, a Commiſſion was awarded to 12 ſeverall Peeres, and others of greateſt wiſdome and fidelity: the Cõmiſſioners had power in al things

concerning the houſhold, Courts of Iuſtice, and the Revenew; In a word, in all things concerning the good of the Realme, with full power finally to determine and put in execution for the honour of the King, the better Governance of the peace, and Lawes of the Land, and reliefe of the people.

This Commiſſion was to endure one yeare, at the yeares end the King would be of full age.

My Lords, the endeavouring to overthrow this Commiſſion, iſſued by Authority of Parliament for the welfare of the Realme, upon pretence that it trenched upon the royall power, tended to the diſheriſon of the King, and derogation of the Crowne, together with the deſtruction of the Commiſſioners who procured it, & put the ſame in execution, upon pretence that they and ſome others had in Parliament forced the Royall Aſſent.

My Lords, the conſpiring to overthrow this Commiſſion and the procu-

rers

rers of it, is the caſe in briefe.

For although there be divers other Articles againſt many of them, yet this was the ground-work of all, and this ſingly and alone is declared in all the proceedings in that Parliament to be Treaſon.

Of theſe 18 perſons condemned, five of them were Plotters, *viz.* the Archbiſhop, Duke, Earle of Suffolke, *Treſilian* the Chiefe Iuſtice, and Sir *Nicholas Brembre*.

Theſe inſinuated into the King, that this Commiſſion was in diminution of his Kingly Power, that the procurers of it had extorted his Royall aſſent; and that this was treaſon: Thereupon *Blake*, one of the Kings Councell at Law, was adviſed withall, who declared his Opinion that it was treaſon; he was commanded to prepare an Inditement of treaſon againſt the Commiſſioners, and ſome of the procurers of it, who had beene active therein.

The Inditement was drawne by him, which is entred in the Roll, and is to this

effect; That they had trayterouſly conſpired amongſt themſelves in the Parliament, to make this Commiſſion by authority of Parliament againſt the regality of the King, to his diſheriſon, and in derogation of the Crowne that they compelled the Kings conſent, and that they confederated and bound themſelves to maintaine one another in ſo doing.

It was intended that they ſhould be tried upon this Inditement in Middleſex or in London; *Vske* the Vnder-Sheriff of Middleſex was acquainted with the buſineſſe, who was to prepare things there for the effecting this Deſigne, (ſome of the parties to be indited not being Peeres) which hee performing accordingly was therefore executed.

The five Plotters, that the King might the more confide in their counſells, (for ſo are the words of the Record) and that under colour of Law they might cover their malice from the King and the Kingdome, before the tryall was to be had, they adviſe the King to demand the opi-

nion

nion of ſome of the Iudges, that is, of the two Chiefe Iuſtices, and Chiefe Baron, the Iudges of the Common Pleas, ſix in number, and of *Lockton*, the Kings Serjeant.

Blake of the Kings Councell at Law, was commanded to draw up thoſe queſtions for the Iudges opinions, who did it accordingly.

For the drawing up of thoſe queſtions, and the Inditement, *Blake* was condemned and executed.

The queſtions being drawne into writing, the Iudges were ſent for to Notingham Caſtle, where in the Kings Preſence they were commanded upon their Allegeance to deliver their opinions.

The firſt queſtion was, Whether the Commiſſion was in derogation of the Crowne; they anſwered, that it was.

The ſecond queſtion was, Whether the perſwading and urging the Kings conſent in Parliament thereto was treaſon; they anſwered, that it was.

Though there were ſome other que-

ſtions asked all concerning Parliamentary proceedings, yet thoſe were the maine, and thoſe for which they were condemned, as appeares by the replication of the Commons to the Iudges anſwer, and by the words of the judgment, *viz.* that they knew that this Commiſſion was awarded in Parliament, that it was for the publike good, that they knew of the traiterous intent to deſtroy the procurers of this Commiſſion, that they knew the law, and that it was not treaſon, and had delivered their opinions, thereby under colour of law to cover their treaſonable intent, and therefore judgment of high treaſon was given againſt them, and againſt *Locton* the Kings Serjeant at Law, who had ſubſcribed theſe opinions with the Iudges.

Sir *Simon Burley* one of the five Knights that were executed, was condemned only for conſpiring the death of the procurers of this commiſſion.

And although there be other Articles againſt the reſt, yet this alone is adjudged treaſon in the ſeverall judgments againſt every

every one of the eighteen.

My Lords, it is obſervable in all theſe judgments, that they are adjudged traitors as wel againſt the perſon of the King as againſt the Common-wealth.

It is there declared upon great adviſe taken, that in treaſons which concerne the King and Kingdome, they are not bound to proceed according to the rule of the Common Law, and inferiour Courts, but according to the courſe of Parliaments, ſo as may be for the common good.

Thirdly, Iudgment was given in Parliament, and execution awarded, and afterwards a Bill of Confirmation paſſed in reſpect of their Lands, to give them from a day paſt, and for declaration, that this ſhould be no preſident to inferiour Courts, to adjudge the ſame caſes treaſon, ſave only in Parliament.

Theſe Iudgments were not hudled up in haſte, but they were given upon long and mature deliberation; theſe judgments were the whole worke of that Parliament,

ment, and the proceedings againſt the five plotters were begun the fourteenth of *November*, and the Iudgements were not given till the fifteenth of *February* following, which was a quarter of a yeare.

And it is declared in the Roll, that they ſpent long time, and took great pains in examining the Evidence, the better therby to ſatisfie their own conſciences, and the World.

I inſiſt the more upon this, to take away all blemiſh from theſe proceedings.

It is true my Lords, theſe Iudgments were afterwards in the Parliament of 21 *Ric.*2. revoked and made void.

But my Lords, that Parliament of 21 *Ric.*2. of Revocation was held by force, as is declared in the Parliament Rol of 1. *H.*4 *No.*21. and 22. that it was held *viris armatis & ſagittariis immenſis.*

The Knights of Parliament were not elected by the Commons, *prout mos exigit, ſed per regiam voluntatem*, and ſo the Lords *ſummoneri fecit, Rex omnes Dominos ſibi adherentes.* My Lords, by theſe proceedings

it

it doth appear that this Parliament of Revocation was no free Parliament, if at all it deſerves the name of a Parliament. But to put all out of doubt, in the Parliament 1 *Hen.* 4. *No.* 48. theſe Iudgments of Revocation, are declared to be *erronea, iniqua, & omni juri, & rationi repugnantia*, erronious, wicked, and contrary to all right and reaſon; and in the Parliament of 1 *H.* 4. in print, theſe Attaindors are confirmed: ſo that theſe Iudgments of Attaindors have the authority of two Acts of Parliament, both of them of force at this day.

Your Lordſhips will give mee leave to obſerve the differences and agreements between the offences of thoſe, and of the preſent Iudges, and that as well in the way and manner of procurement, as in the matter of them.

For the manner of procurement, thoſe Iudges in *Richard* the ſeconds time, were in the Kings preſence, as it is in the Parliament Roll of 1 *Hen.* 4. *No.* 18. they were *violenter attracti*, violently drawn to deliver their opinions, and that *metu mortis*,

& cruciatus corporis, for fear of death and torture of their bodies. And at their trials, they ſeverally ſay, that in part violence had been offered to their perſons, becauſe they had deferred the delivery of their opinions.

My Lords, this was ſuch a miſcarriage in thoſe Iudges (theſe circumſtances conſidered) as might *cadere in virum fortem & conſtantem*; but my Lords, fear or cowardize is no plea for delivery up of the forts and bulwarks of the Kingdome; but in the preſent buſineſſe there is none of all this, it came from within, there was no outward force.

Secondly, In thoſe of *Richard* the ſecond, it was *actus unicus*, once done at *Nottingham* Caſtle, if the Iudges had been put to it the ſecond time, perhaps the reſt as well as ſome of them had repented, and would not have done it over again. For *Belknap* the Chief Iuſtice of the Common Pleas, the ſame day declared his ſorrow, and ſaid, that now there remayned nothing but a horſe, a hurdle, and a halter,

ter, and *Fulthorp* another of them the next day declared his grief for what he had done.

But here after the opinion in *November*, 1635, a year after, *viz.* 1636, they proceed *à peſsimo ad pejus peſsimo*, for that was with addition; moſt of them declared their opinions in their Circuits, and a yeare after confirmed it again by the judgment in the Chequer; here it was done year after year in cool bloud. One Murdrous bloud, whereupon death follows, is felony; but to multiply wounds upon the dead body, and to come againe in coole bloud to doe it, it ſhews the height of malice.

In theſe two things they agree.

That which the Iudges did in *Richard* the ſeconds time, they did it againſt their owne knowledge, they knew the Commiſſion was by Act of Parliament.

So here they knew that the Petition of Right damn'd the Commiſſions of Lone, a ſtronger caſe then that they ſubſcribed; Many of them knew that the Commiſſion of Exciſe was damned in Parlia-

ment, they knew the other proceedings in Parliament, and if they had forgotten them they were afterwards put in minde of them, they needed not to have consulted with any book or journall of Parliaments, saving only with their owne memories.

They agree in this, that their opinions tended to the subversion of the Laws and Statutes of the Kingdome.

For in that of *Richard* the second, the offence was the indevouring to overthrow Parliamentary proceedings; the conspiracy of the death of the procurers, was only an aggravation: for it was not treason to conspire their deaths; it is not treason to conspire the death of a Privy Counsellor, or to kill a Iudge, unlesse hee be upon the Bench, and in that case it is treason, because of the malice, not to the person, but to the law: so here the treason lay in this, not that they conspired barely against the persons, but with reference to their proceedings in Parliament, thereby to overthrow the Act of Parliament, wherein

those

thoſe perſons had bin principall Actors.

But in this againe, they diſagree, for in that caſe, there was only a conſpiracy, no death followed to the procurers of the Commiſſion, nor was the Commiſſion overthrowne; all that was done was this, that a Warrant was directed to the Lord *Major* of *London*, for apprehending their perſons to bring them to triall, which yet was not done.

But here after the opinions delivered, judgment was afterwards given by them in the Chequer, and execution awarded thereupon, for ſo much as concerns our property: and likewiſe in the Kings Bench, where the Iudges, after the judgement in the Exchequer, refuſed to heare any more debate of the matter. And ſo for the liberty of our perſons, by keeping divers of the Subjects in priſon terme after term for not paying Ship-mony, and other things dependant upon thoſe opinions; when they had bin brought before them upon their *habeas Corpus*.

In that of *Rich.* 2. it was for overthrowing

throwing but of one Act of Parliament, which was likewiſe Introductive of a new law. For the Commiſſion had no riſe from the Common law, for in truth it was derogatory to the Crowne. It had onely the ſtrength of the Parliament to ſupport it, which was ſufficient. It was for the common good.

But here the endeavour was at once not to blow up one Act of Parliament, but all, and thoſe not introductive, but declaratory of the common Law, as was the petition of right, the Statutes there mentioned, and the Reſolutions.

That of *Rich.* 2. was but the blowing up of the upper deck; this of the common law, and the ſtatutes too, of the old foundations and the ſtructures built upon them altogether.

That of *Rich.* 2. it was only to overthrow a Temporary Act of Parliament, which was to continue no longer then one yeare.

But this to make an eternall Devaſtation for *toties quoties*, to the worlds end,

as

as his Majeſtie or his Succeſſours ſhall ſay, that the Kingdome is in danger, May theſe opinions be put in execution: and likewiſe they are inrolled in all the Courts of Weſtminſter Hal *in perpetuam rei memoriam.*

The ſinne againſt the Holy Ghoſt is therefore unpardonable, becauſe it takes from the party repentance, the meanes of pardon.

To put us therefore into a caſe of deſperation, ſome of them have publiquely and upon the Bench declared, that this Prerogative is ſo inherent in the Crown, as that it cannot be taken away by Act of Parliament.

As they have put an impoſſibility upon themſelves, ſo would they put an impotencie upon his Majeſtie, your Lordſhips, and the vvhole Parliament of ever righting us againe.

My Lords, *Contraria juxta ſe poſita magis eluceſcunt*, I have preſented your Lordſhips with the obliquity of thoſe ill Iudges in *Rich.* 2. time, give me leave to preſent

preſent your Lordſhips with one example of a contrary nature, and that was in Queen *Elizabets* time; in the nine and twentieth year of her Reigne, ſhe erects a new Office in the Common Pleas, for the making of *Superſedeas* on *Exigents*, that iſſued there, ſhe grants it to *Richard Cavendiſh* her ſervant, ſends to have him admitted, but the Iudges delay the doing of it; On this reaſon, becauſe the *Prothonotaries* and *Phillicers* claymed the making of thoſe Writs: the Queen ſends a ſharp Letter, and commands them forthwith to admit him, yet the Iudges forbeare; the Queene ſends a ſharper Letter, commanding them to ſhew the Reaſons of their contempt and diſobedience to the then Lord Keeper, and the Earle of *Leiceſter*, (no meane men in thoſe dayes) the Iudges deliver their reaſons why they had refuſed, and it was becauſe others claimed the making of thoſe Writs: the Queene ſends a fourth peremptory meſſage for their admitting of

of him, with this reaſon, that if the others were put out, they were rich and able men, and that her Courts of Iuſtice were open where they might demand their right; this was not to take away their right, but to put them to their Action.

The Iudges humbly returned this anſwer, that the Queen had taken her oath for the due execution of Iuſtice according to the Law, that they did not doubt, but that when her Majeſty was informed, that it was againſt the Law, ſhe would do what befitted her; for their parts they had taken an oath to God, to Her and the Common-wealth, and if they ſhould do it without proceſſe of Law before them, and only upon Her command put the others out of poſſeſſion, though the right remayned to them, it were a breach of their oath; and therefore if the feare of God were not ſufficient, they told her the puniſhment that was inflicted upon

their Predeceſſours for breach of their oaths, citing thoſe of *Thorpe*, in King *Richard* the ſeconds time, that they might be ſufficient warning to them.

The Queen hearing of theſe Reaſons was ſatisfied, and the Iudges heard no more of the buſineſſe.

This remaines under the hands of Anderſon *the Lord Chiefe Iuſtice in a Book of his Reports.*

Theſe Iudges have had examples of both kinds before them, they might have choſen the good and refuſed the bad.

My Lords, beſides theſe Iudgments and Opinions, the Commons will in due time bring up theſe Iudges with their other Iudgments *Corpora cum cauſis*, for your Lordſhips will eaſily conceive that they who have done this, have done more.

The principall of them, I meane, my Lord *Finch*, ſtands accuſed before your Lordſhips of high treaſon, hee is not here

here; Iuſtice goes *pede lento*, *ſed certo*; it will overtake him at the laſt.

The next ſtep, it is making after him, are the Articles of his Impeachment, which with your Lordſhips patience are now ready to be opened and delivered to your Lordſhips.

Pag.6. Line 8. for Ilands r. Inlands.

FINIS.